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SUBJECT: WEAK SENTENCES IN HIGH PROFILE ALBANIAN CORRUPTION TRIAL

REF: May 5, 2008 Tirana DAR

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Summary  
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11. (SBU) Albanian justice is off to a slow start in fighting the country's endemic corruption. On May 19, the Tirana District Court sentenced Nikolin Jaka, former Deputy Minister of Transportation, to 19 months in prison and Ilirjan Berzani, the former General Director of Roads, to three years in prison following their convictions in a high-profile corruption scheme dating from July 2007. Both Jaka and Berzani were imprisoned after their arrests in September 2007. Three other government officials and two businessmen were also found guilty and sentenced to similar prison terms. This prosecution case represents the first criminal conviction of a senior politically appointed government official since Prime Minister Sali Berisha assumed power in 2005 after campaigning on an anti-corruption platform. Although the arrests were trumpeted as a victory in the fight against corruption, the lenient sentences handed down raise doubts whether the punishment fits the crime. In the eyes of average Albanians, this case reinforces the perception that crime in Albania actually does pay.

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Corruption Scheme Gone Wrong  
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12. (U) On September 18, 2007, following a two-month investigation spearheaded by the Albanian State Police, law enforcement authorities arrested the Deputy Minister of Transportation, Nikolin Jaka, the General Director of Roads, Ilirjan Berzani, three other senior officials from the Department of Roads and two businessmen on charges of being part of an organized corruption scheme that awarded road tenders to pre-assigned companies in exchange for bribes. The police investigation revealed that in July 2007, Road Director Berzani met at the premises of the Triss Construction Company with a number of construction businessmen to reach an agreement over the allocation of upcoming road tenders. Berzani and the companies agreed that companies would bid and win certain tenders in return for the remaining companies winning future tenders. By eliminating competition, high bids would not be undercut and the overall amounts awarded would be greater, thus ensuring more money for the companies and bigger bribes for the officials.

13. (U) To put the corruption scheme in context, the Albanian Department of Roads manages a budget of approximately USD 730 million annually, which equates to nearly 50 percent of the total funds available for investment by the GOA. Prosecutors suspected that in return for awarding a single tender, a payment of USD 150,000 was made to Berzani. Despite the initial agreement regarding the first two tenders, several companies backed out and entered the competition process. Following a tip-off by one of the businessmen involved, the police began an investigation which included wiretaps on several members of the group. The wiretap

evidence documented attempts by Deputy Minister Jaka and Director Berzani to urge several companies to stay out of the competition on the agreed tenders in order to ensure that the pre-assigned companies would win.

14. (U) In September 2007, the audit office within the Ministry of Transportation discovered many irregularities in the tenders and ordered the tender process halted until an audit was complete. Fearing that the officials, whose scheme was not uncovered by their own ministry auditors, would flee the country, prosecutors obtained arrest warrants for the officials.

15. (U) Although initial reports by the police indicated that the evidence was sufficient to prove charges of corruption, the investigation did not succeed in bringing serious charges that would ensure a punishment that was commensurate with the gravity of the criminal offense originally made. Jaka was initially arrested for a crime committed during the exercise of his official office, but was only charged with exercising unlawful influence on public officials, a criminal offense generally applicable to regular citizens rather than state officials. The latter charge carries a maximum penalty of four years rather than the eight-year term applicable to the former. According to prosecutors, although Jaka pressured Berzani and others to obtain bribes relating to the tender of road contracts, Jaka was not acting in the exercise of his official duties, a necessary element for proving the crime of passive corruption. The prosecutors also claimed they lacked the evidence necessary to charge the officials for being part of a "structured criminal group," which would have added a five-year sentence to the terms of each of the defendants found guilty.

16. (U) Upon the conclusion of the trial, Jaka only received a 19-month sentence and a fine of USD 15,000. He was released on May

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30, based on time already served. (Time served under pre-trial detention counts as 1.5 days for each day served.) The court also prohibited Jaka from exercising any public functions for a period of three years. Berzani received the longest sentence; three years in prison and a fine of USD 30,000 with a prohibition from exercising public functions for five years. With the exception of the two indicted businessmen, the leaders of the other companies who took part in the illegal deal-making were never charged or sanctioned for their involvement in the scheme. It is unclear whether the prosecutors will appeal the sentences.

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But In Albania, It Is Always About Politics  
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17. (U) The arrests came at a time when Prime Minister Berisha was engaged in a battle to remove former Prosecutor General Sollaku from office. Most of the officials arrested in this case were members of the Christian Democratic Party (PDK), a junior coalition partner in the Government coalition which had often publicly disagreed with the Prime Minister. While many Albanians welcomed the arrests, others criticized the Government for undertaking selected attacks aimed at exerting pressure on unruly coalition partners rather than actually fighting corruption. Caught in a difficult political position, the head of the PDK, Health Minister Nard Ndoka, failed to distance his party from the arrested officials. Ndoka publicly charged that the case was politically motivated and that the officials were unfairly targeted.

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Comment  
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18. (SBU) The detention and sentencing of a former Deputy Minister is a positive development in a country where corrupt senior officials have consistently escaped criminal punishment. (The conviction of the Ministry of Labor Secretary General reported Ref differed as a Secretary General is not technically a political appointee or member of government. That sentence, however, was a more credible one.) The lenient sentences handed down in this case reinforce the public perception that the Government is not serious

in its fight against public corruption. This perception was noted in a recent opinion piece in a leading Albanian daily newspaper: "At a time when American taxpayers keep pouring money to help Albania, [this trial] showed again that theft is a worthwhile activity for our officials. It is worth doing a bit of time in prison in exchange for ensuring the wealth of your descendants for up to three generations." While such statements do not take into consideration the technical aspects of the case, this sentiment does reflect a commonly held opinion of many citizens. The lenient sentences have reinforced the perception that political connections and money still protect officials from the fair application of the law. The great fanfare of the arrests followed by the letdown of the reduced sentences highlights the continuing communication problems between police and prosecutors and the failure of the judicial system to effectively prosecute senior officials. The handling of evidence presented in the case, which consisted mainly of intercepted phone calls between the defendants, also reveals the need for additional training for prosecutors and judicial police officers.

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